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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)**

STEVEN BUSTILLOS,

Plaintiff and Appellant,

v.

COUNTY OF SHASTA et al.,

Defendants and Respondents.

C085885

(Super. Ct. No. 187406)

Procedurally, this case is *sui generis*. Plaintiff Steven Bustillos was employed as an investigator for defendant Shasta County in its prosecutor's office (the prosecutor's office is included as a redundant defendant as well). In November 2015, Bustillos was served with notice of an adverse action based on his dishonesty (the details of which are not clear from the petition). In June 2016, defendant Shasta County Employee Appeals

Board (Board) upheld a suspension without pay as discipline.¹ Bustillos “admittedly” never sought judicial review of the Board’s decision within the 90-day limitations period. (Code Civ. Proc., § 1094.6, subd. (b).)

Instead, Bustillos brought the present proceeding for a writ of traditional mandate against these defendants in May of 2017—along with the former district attorney and chief deputy (now district attorney) in their official capacities—for damages, declaratory relief, and injunctive relief under Government Code section 3309.5,² including directives to defendants to set aside the Board’s June 2016 decision, “restore” him to his position, and “provide to Bustillos all interview materials obtained during the investigation into his alleged misconduct, but improperly withheld from him,” which he claimed the right to receive pursuant to section 3303, subdivision (g). The party defendants and the Board separately demurred. The trial court sustained the demurrers without leave to amend and entered a judgment of dismissal; it concluded that traditional mandate would not lie for a discretionary decision to withhold the interview materials as confidential, and in any event either reinstatement or damages were unavailable under section 3309.5 under settled law.

On appeal, Bustillos continues to pursue his meritless claim that pursuant to section 3309.5 he is somehow entitled to raise a collateral attack on the now final administrative decision upholding his suspension and receive damages because the County defendants violated disclosure obligations under section 3303. We shall affirm the trial court’s judgment.

¹ Bustillos alleges he was “dismissed” from employment. The party defendants append a “*sic*” to their reference to this allegation. While the Board adverts to its motion for judicial notice filed in connection with its demurrer, this is not included in the record on appeal, so we disregard the references.

² Undesignated statutory references are to the Government Code.

We do not need to add anything to our summary in this introduction. We therefore proceed to our analysis.

DISCUSSION

Defendants and the trial court are correct on the substantive scope of an action pursuant to section 3309.5. Where a peace officer's procedural rights under section 3303 have been violated in connection with the imposition of discipline, section 3309.5 allows *anticipatory* or *contemporaneous* initial resort to a court for a broad spectrum of relief for any violations of section 3303 *in addition to* any administrative challenge the peace officer might raise to the disciplinary action.³ However, once administrative review of the adverse action has been completed, section 3309.5 is not an independent basis for seeking judicial review of the administrative decision, and can be raised only in connection with a petition for administrative mandate. (*Alameida v. State Personnel Bd.* (2004) 120 Cal.App.4th 46, 53-55, 60 [may raise claim under section 3309.5 *either* in administrative proceeding or in court]; *Gales v. Superior Court* (1996) 47 Cal.App.4th 1596, 1602-1603 [may seek relief under section 3309.5 *in conjunction with* writ of administrative mandamus reviewing administrative decision upholding discipline, not as alternative basis for damages and review of administrative decision] (*Gales*); *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1256-1257 [may seek injunctive relief under section 3309.5 while administrative process is pending]; *Henneberque v. City of Culver City* (1985) 172 Cal.App.3d 837, 842-844 [court may grant injunction for back pay as damages for violation of section 3303 for period in which peace officer was denied procedural rights before demotion eventually upheld in court-ordered administrative

³ However, a trial court has jurisdiction under the doctrine of equitable discretion to refuse to exercise its discretion over the matter and defer to concurrently available administrative proceedings. (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 246, 248-258, 261; *Alvarado v. Selma Convalescent Hospital* (2007) 153 Cal.App.4th 1292, 1297-1298.)

proceeding]; see *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1292-1293 [noting broad scope of remedies available while administrative proceeding *pending*, but ultimately not finding violation].)

However, regardless of the lack of a substantive remedy under section 3309.5, the present case confronts a bar against proceeding. While *Gales, supra*, 47 Cal.App.4th at page 1603, cited an “unsettled” state of law 22 years ago that motivated the court to give leave to the plaintiff to amend a (presumably untimely) petition on remand to seek a writ of mandate in addition to relief under section 3309.5, here, the administrative decision was long final before Bustillos filed the present case, and *Gales* has made evident that he should have raised this claim concurrently with a timely petition for judicial review of the administrative decision. As a result, the administrative decision is now a *conclusive* adjudication “as to those issues in the second action which were actually litigated and determined in the first action” (i.e., issue preclusion) and stands “as a bar to the maintenance of a second suit between the same parties on the same cause of action” (i.e., claim preclusion). (*Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 242 (*Knickerbocker*).) Therefore, it is irrelevant (as Bustillos continually reasserts) that a proceeding invoking section 3309.5 is not subject to the exhaustion of *administrative* remedies, as we are instead confronting the consequences of failing to exhaust *judicial* remedies. (*Knickerbocker*, at p. 240 [pointing out in response to similar briefing on appeal that defendants were “barking up the wrong judicial tree”].)

In the present proceeding, Bustillos is precluded from relitigating the finding that there was cause for his suspension without pay; “Thus, it does not matter . . . that his remedies at common law are independent of any relief the Commission might award. The question is not what damages can be awarded but what issues have been conclusively determined between the parties.” (*Knickerbocker, supra*, 199 Cal.App.3d at pp. 244-245.) What allowed the plaintiff in *Knickerbocker* to maintain a second action (subject to

issue preclusion) was the extent to which it was premised on emotional distress from a *dismissal* that was not sustained in the prior administrative proceeding, as opposed to the *demotion* that was sustained. (*Id.* at p. 245.) By contrast, the present proceeding—to the extent it does not impermissibly seek to relitigate the merits of the administrative decision—involves only a question of timely access to evidentiary materials, and does not even allege that the content of these materials might have altered the outcome, or that the exacting criteria for extrinsic fraud⁴ might be satisfied (presuming that section 3309.5 is a proper vehicle for such a claim). Bustillos *could have* raised this claim under section 3309.5 in the administrative proceedings or in a *contemporaneous* judicial proceeding, and (perhaps) *could have* conjoined this claim under section 3309.5 with a timely writ of administrative mandate (if not forfeited, an issue we do not decide).⁵ As such, Bustillos utterly fails to demonstrate that this procedural right is independent in any respect from the primary right at issue in the administrative proceeding—his right to employment free of unwarranted discipline—and as a result *claim* preclusion bars the present judicial proceeding. (See *Pitts v. City of Sacramento* (2006) 138 Cal.App.4th 853, 856; *id.* at p. 857 [finding, however, a different primary right at issue in second action of *timeliness* of acceptance of conditional reinstatement, as opposed to *propriety* of conditions in prior action].)⁶

⁴ 8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, §§ 229, 235, pp. 838, 850.)

⁵ E.g., *Takahashi v. Board of Education* (1988) 202 Cal.App.3d 1464, 1481.

⁶ In light of this conclusion, we do not need to reach the trial court’s alternative thesis that the party defendants’ decision to withhold investigative materials under a claim of confidentiality cannot be reviewed in a writ of traditional mandate.

DISPOSITION

The judgment is affirmed. Defendants are awarded costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

BUTZ, Acting P. J.

We concur:

DUARTE, J.

HOCH, J.